

**“The City of Heritage”**



# **Ulundi Local Municipality**

***Declaration of Conflict  
Of Interests Policy  
Vers 01***

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## 1. *Introduction and background*

- (1) The purpose of this Policy is to help Ulundi Local Municipality (the Municipality), and each of the Municipality's Officials to identify and properly address potential conflicts of interest involving the municipality staff officials.
- (2) This policy promotes the provisions of the Code of Ethics and good business conduct applicable to all municipal employees.
- (3) Although it is impossible to describe every situation that might give rise to a potential conflict of interest, this policy addresses the following common situations that may give rise to a potential conflict of interest:
  - (a) Situations where an official has a personal financial interest, whether direct or indirect, in a transaction or arrangement entered into by the Municipality or in an entity doing business with the Municipality; and
  - (b) Situations where an official intends to exploit a business opportunity that rightfully belongs to the Municipality.

## 2. *Terminology*

The following terms used in this Policy are defined as follows:

<b>Term</b>	<b>Definition/s</b>
<b><i>Interested Parties</i></b>	<ol style="list-style-type: none"><li>(1) Any official who has a financial interest (as defined below), or whose related party (as defined below) has a financial interest, or who, or whose related party, is presented a potential business opportunity (as defined below).</li></ol>
<b><i>Related Party</i></b>	<ol style="list-style-type: none"><li>(1) any immediate family member of an official of the Municipality, which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law of such official and any person (other than a tenant or employee) sharing the household of such official; and</li><li>(2) Any entity (whether non-profit or for-profit): (a) which is directly or indirectly owned or controlled by the official, individually or together with persons related to such official pursuant to (1) above; or (b) of which the official is an official, Municipal Manager, partner, employee or trustee, <i>provided</i>, however, that an entity shall not constitute a related party of an official of the Municipality under the following circumstances:<ol style="list-style-type: none"><li>(a) An official's position with such entity is solely as a non-employee, advisory Council member or limited partner; or</li><li>(b) An official's position with such entity is as an official, partner or trustee who does not have management-level decision-making authority or have material input into management-level decisions of such entity with respect to actual or potential transactions (including acquisitions and investments) between such entity and third parties.</li><li>(c) For this purpose, "owned" means controlling or holding, directly or indirectly, 10 percent or more of the voting or economic interests in the entity, if it is not a public company, or 5 percent or more of</li></ol></li></ol>

- the voting or economic interests in the entity, if it is a public company, in either case as a stockholder, partner or member;
- (d) "Controlled" means having the right to appoint any of the officials, councillors or other positions on the governing body of the municipality.

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**Financial Interest**

- (1) An official has a financial interest if such person or, to the knowledge of such person, a related party of such person has, directly or indirectly, whether through any business, investment or family relationship, any of the following:
- (a) A significant investment (as defined below), existing or potential, in any entity;
  - (b) A compensation arrangement or right, existing or potential, with any entity or individual with which the Municipality has, or is negotiating, a material (as defined below) transaction or arrangement.
- (2) Compensation includes direct and indirect remuneration, as well as gifts or favours that are substantial in nature (i.e. with a value of R 5, 000 or more). Favours include the right to purchase shares in other companies.
- (3) No payment of compensation for services rendered, on a one-time basis, at a rate or a charge substantially similar to the rate or charge then generally quoted or offered for substantially similar services, shall be deemed to constitute compensation, so long as it is not in excess of the amount determined by Accounting Officer as material.
- (4) In addition, no payment or reimbursement of expenses or costs incurred in providing any services, to the extent the amount of such payment or reimbursement is reasonable in the circumstances, shall be deemed to constitute compensation.
- (5) The existence of a financial interest is not, in all cases, a conflict of interest. A person who has a financial interest will be deemed to have a conflict of interest only if the Accounting Authority (the "Council") or appropriate committee or official determines that such financial interest creates a conflict of interest.

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**Significant Investment**

- (1) A significant investment in a company, whether private or public, is the beneficial ownership, whether direct or indirect through any other person or entity, of the securities of such company **representing 5% or more** of the voting power of such company's outstanding shares.
- (2) For purposes of such ownership calculation, the investment of such official, and any investment, of which such official is aware, of each of his or her related parties, shall be aggregated.

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**Material**

A transaction or arrangement with another organization, whether for-profit or non-profit, is material if it involves, or is reasonably likely to involve, aggregate payments to, or aggregate payments by the Municipality, in any fiscal year of the recipient or the paying party, exceeding the greater of:

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- (1) R 50,000, and
  - (2) An amount equal to 5% of the consolidated gross revenues of the recipient or the paying party, respectively, for that party's most recently completed fiscal year.
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***Business Opportunity***

- (1) A business opportunity is a business opportunity that an official, or, to his or her knowledge, a related party of such person, intends to pursue, whether through investment or participation in the business, and that the Municipality might reasonably be interested in pursuing, which;
    - (a) Has a direct or close relationship to a business or line of business in which the Municipality is currently engaged, or
    - (b) With respect to which;
      - The Municipality has publicly announced, it intends to engage or
      - The official is aware the Municipality has determined, it intends to engage or is in the process of considering whether it will engage.
  - (2) However, the possible exploitation by an official, or any of their related parties, of a business opportunity is not, in all cases, a conflict of interest.
  - (3) A potential business opportunity will be deemed to lead to a conflict of interest only if the Accounting Authority or appropriate committee or official decides that such business opportunity creates a conflict of interest.
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***Officials***

- (1) Accounting Authority,
  - (2) Accounting Officer/or Municipal Manager and
  - (3) All other staff members of the Municipality.
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### **3. Disclosure of potential conflict**

- (1) In connection with any actual or possible conflict of interest, including any business opportunity, an interested person must disclose, promptly after first becoming aware of such actual or potential conflict of interest, as applicable:
  - (a) The existence of his or her existing or potential financial interest and any related party's existing or potential financial interest and all material facts with respect to such financial interest, to the appropriate committee or person; or
  - (b) The existence of any potential business opportunity in which he or she, or any related party, is or would be a participant (whether as an official, employee, consultant, stockholder, lender, lessee or otherwise) or his or her, or any related parties, investment is or would be in **excess of R 50, 000**, and all material facts with respect to such investment, participation and business opportunity, to the appropriate committee or person.
- (2) In the case of any such actual or possible conflict of interest where the interested person is an official who is senior, or any related party of such an official,
  - (a) If such actual or possible conflict of interest involves such a business opportunity, such disclosure shall be made to the Accounting Officer or Independent or Risk Committee on independence issues of the senior managers, which shall have authority to determine whether the Municipality should pursue such potential business opportunity, or
  - (b) If such actual or possible conflict of interest involves only a financial interest, such disclosure shall be made to the Accounting Officer or in case of the Accounting Officer to the Mayor, who shall have the authority to determine whether such financial interest creates a conflict of interest.
  - (c) The Accounting Officer of the Municipality shall report, in writing, to the Executive Committee on each determination he/she makes with respect to a potential business opportunity in which conflict of interest exists.
- (3) The Accounting Officer may, from time to time, delegate its responsibilities under this Policy to a senior manager.
- (4) In the case of any such actual or possible conflict of interest where the interested person is a senior manager or the Accounting Officer or any related party of a senior official, such disclosure shall be made to the Executive Committee to whom senior official reports, which shall have authority to determine:
  - (a) Whether any business opportunity should remain available for the Municipality to pursue, and
  - (b) Whether any financial interest creates a conflict of interest.
- (5) In the case of any actual or possible conflict of interest or business opportunity where the interested person is the Accounting Officer, such disclosure shall be made to the Mayor, who shall have the authority to determine:
  - (a) Whether any business opportunity should remain available for the Municipality to pursue, and
  - (b) Whether any financial interest creates a conflict of interest.
- (6) Any Official or the Accounting Officer may, at his or her sole discretion, refer the consideration of any such conflict of interest to the Executive Committee.
- (7) The *Executive Committee* may, at its sole discretion, refer the consideration of any such conflict of interest to the (Accounting Authority) Council.

#### **4. *Determining whether conflict of interest exists***

- (1) After full disclosure of a financial interest or potential business opportunity and all material facts related thereto, and after any discussion with any person or persons, including with the interested person, in which he, she or it may choose to engage, the Executive Committee, responsible official or Council, as the case may be, shall decide if a conflict of interest exists with respect thereto.
- (2) Any such decision being made by other than the responsible official shall be made by a majority vote of the disinterested members of the Council or Executive Committee, as the case may be.
- (3) If acceptable to the responsible official, the Council or Committee, as applicable, an interested person may make a presentation, with respect to the potential conflict of interest, to such official or at the Council or Committee meeting, as the case may be.
- (4) In the case of a potential business opportunity, the responsible official or the chairperson of the Council or Committee, as applicable, may, if appropriate, appoint a disinterested person or committee to investigate whether the transaction or arrangement should remain available for the Municipality to pursue on its own behalf and any such person or committee shall report the results of its investigation to the responsible official or the Council or such Committee, as the case may be.
- (5) The Executive Committee or the Council, by a majority vote of its disinterested members, or the responsible official, as the case may be, shall determine;
  - (a) In the case of a potential conflict of interest arising from a financial interest, whether the Municipality can obtain, with reasonable efforts, a more advantageous transaction or arrangement (taken as a whole), than the transaction or arrangement at issue with the company in which the financial interest is held, that would not give rise to a conflict of interest, or
  - (b) In the case of a potential business opportunity, whether the transaction or arrangement should remain available for the Municipality to pursue on its own behalf.
- (6) If a more advantageous transaction or arrangement may not be obtained, with reasonable efforts, under circumstances that would not give rise to a conflict of interest, the Executive Committee or the Council, by a majority vote of its disinterested members, or the responsible official, as the case may be, shall determine whether the transaction or arrangement is in the Municipality's best interest and for its own benefit and whether the transaction is fair and reasonable to the Municipality, and the interested person shall make his/ her or its decision as to whether to enter into the transaction or arrangement in conformity with such determination.

- (7) The Executive Committee, with the assistance of management of the Municipality, shall put in place such procedures as will enable the Municipality to determine whether a person who becomes subject to this Policy, as a result of promotion or being hired by the Municipality, may be in violation of this Policy as a result of becoming subject to this Policy.
- (8) Such procedures shall include obtaining from such person, in connection with the hiring, promotion process or nomination process, the statement and disclosure contemplated by Chapter Four.

## **5. *Investments made by the Municipality officials***

- (1) Senior officials may invest in third party entities as part of their personal investment strategy. However, investments in:
  - (a) Entities that, as a material part of their business, compete with any material part of the Municipality's business, or
  - (b) The Municipality's own portfolio companies may create a conflict of interest or the appearance of a conflict.
- (2) To avoid any such conflicts of interest, officials (either individually or with any related party or parties) shall not, without the approval of the Municipal Manager (and the disclosure of the potential investment to the Executive Committee), and the Municipal Manager shall not, without the approval of the Executive Committee, directly or indirectly (other than through investment companies, investment funds or other vehicles in which the official has no influence over specific investment decisions):
  - (a) Invest in the securities of any company in which the Municipality itself has made an equity or equity linked investment;
  - (b) Make any investment in excess of R 50,000 in a potential business opportunity; or
  - (c) Make any investment (determined at the time it is made), whether direct or indirect through any other person or entity, in any competitor of the Municipality described in 5 in the previous paragraph, in excess of R 50,000.

## **6. *Service of the Council***

- (1) No official may serve on the Council of the Municipality or advisory Council, or their equivalent, of any company, other than any non-profit entity, without the approval of the Accounting Officer.
- (2) The Municipal Manager may not serve on such a Council, and no official may serve on the Council of any public or Board of any private company, without the approval of the Mayor or Executive Committee.



## **7. *Violations or non-compliances of the policy***

- (1) If any official has reasonable cause to believe it is likely that any other official has failed to disclose any actual or possible conflict of interest required to be disclosed under this Policy, he or she shall inform the Executive Committee or the Council of the basis for such belief.
- (2) The Council or the Independent Committee shall afford any official who is alleged to have failed to timely disclose any actual or possible conflict of interest required to be disclosed under this Policy (whether his or hers, that of any of his or her related parties, or that of another executive official or any of their related parties), of which he or she was aware, an opportunity to explain such alleged failure.
- (3) If, after hearing the response of such person and making such further investigation as may be warranted in the circumstances, the Council or Executive Committee determines that the person has in fact failed to disclose timely such an actual or possible conflict of interest, it shall take *appropriate disciplinary action*, up to and including possible termination of the person's employment, and corrective action.
- (4) Any other violation of this policy by any person subject to this policy, including engaging in any transaction or arrangement or business opportunity without requisite approval under this policy, will subject such person to appropriate disciplinary action, up to and including termination of his or her employment.

## **8. *Annual statements and declarations***

- (1) Each official shall **annually** submit to the Director Corporate Services (*or his/or her designee*), a statement which confirms that such person has received a copy of this Policy, has read and understands this policy, is in compliance with the policy and has agreed to comply with this policy.
- (2) Each official shall also complete, and submit to the Accounting Officer or Mayor in the case of the Accounting Officer (*or his/or her designee*), at the same time, a **declaration** of potential conflicts of interest, of which such official may be aware, in a form provided to such official by the Municipality.
- (3) The Accounting Officer or Mayor shall raise any issues arising from such disclosure to the Council as appropriate.

## **9. Policy amendments and approvals**

### **9.1 Policy Consultations & Approval**

- (a) *Consultation Process* - The policy will be reviewed by the Accounting Officer/or his designated official.
- (b) *Policy Approval Process* - This Policy shall be approved by the full Council. Any amendments to the policy must be approved at the next Council meeting.
- (c) No policy amendments may be implemented without prior Council approval.

### **9.2 Review and Revision Arrangements Including Version Control**

- (a) *Review and Revision Process* - The Policy shall be reviewed at least *annually* by the Council
- (b) The full Council shall approve the Policy thereafter. All reviews and revisions to any section of the policy and procedures document must be approved by the Council.
- (c) *Version Control* - A Version Control sheet shall be maintained with the document

### **9.3 Dissemination and Implementation**

- (a) *Dissemination* - Once approved, this policy document shall be circulated by *e-mail* to appropriate staff within the organization including management, staff, financial management staff and budget holders.
- (b) The document will also be supplied to the Registry Department for archiving and publishing.
- (c) *Implementation* - Implementation shall be carried out by the Chief Financial Officer and the Accounting Officer shall exercise oversight.

## **EFFECTIVE DATE**

This policy will be effective from the date approved by Council of the Ulundi Local Municipality